IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

MFA.No. 992 of 2001(D)

OPMV.875/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT - PETITIONER:

SARATHY, S/O. SREEDHARAN,
KUNNETH HOUSE, KONAM WEST,
PALLURUTHY, COCHIN - 6.

BY ADV. SRI.T.K.KOSHY
SRI.CEASAR V.PILLA

RESPONDENTS - RESPONDENTS:
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1. K.C. PHILIP, J & P TRANSPORT,
V/973, FACTORY ROAD,
KALAMASSERY.

2. P.M. THOMAS, S/O. MATHAI,
PINACHUKETUMAKKILL HOUSE,
ONAKKOOR P.O., PIRAVOM.

3. THE UNITED INDIA INSURANCE CO. LTD.,
UDYOGAMANDAL.]

BY ADV. SRI.K.J.JOSEMON
SRI.MATHEW SKARIA
SRI.M.A.GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 26/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 992 OF 2001

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Dated this the 26th day of November, 2007

J U D G M E N T

Petitioner in O.P(MV) No.875 of 1996 on the file of the Motor Accidents Claims Tribunal, Ernakulam, is the appellant.

2. Petitioner met with a road traffic accident at about 9.15 p.m. on 2.11.1995. He filed the petition claiming compensation. It was averred that the petitioner was driving a car bearing Reg. No.KL-4/5994 from east to west. A lorry bearing Reg. No.KLK-6663 was also proceeding on the same direction in front of the petitioner's vehicle. When the car reached the place of accident, the driver of lorry suddenly stopped the vehicle. Though the petitioner tried to stop his vehicle, he could not stop the same. It was averred that the lorry came backwards and hit on the front side of the car causing injury to the petitioner as well as damage to the car. Hence the petitioner filed the claim for compensation.

3. Driver and owner of the lorry remained ex parte. Insurer alone contested the case. Negligence alleged on the

part of the driver of the lorry was denied. It was contended that the petitioner was driving the car under the influence of alcohol and he was driving the car in a rash or negligent manner with tremendous speed. It was contended that the car was proceeding just behind the lorry and at the place of the accident petitioner lost his control over the vehicle and it hit on the rear side of the lorry. It was alleged that the accident occurred due to the sole negligence of the driver of the car. Quantum of compensation claimed was also disputed. Petitioner gave evidence as P.W.1 and Exhibits A1 to A12 proved and marked. Respondents did not adduce any documents or produce documents.

4. The Tribunal found that the petitioner was driving the car after consuming alcohol and the accident occurred due to the negligence of the petitioner himself. Tribunal found that the petitioner is not entitled to claim any compensation and dismissed the petition. Challenging that award, the petitioner himself has filed this appeal.

5. Learned counsel appearing for the appellant has argued that the finding of the Tribunal that the accident

occurred due to the negligence of the appellant alone is not supported by any evidence. Exhibit A1 is the FIR and Exhibit A2 is the scene mahazar. Exhibits A1 and A4 show that a case was registered against the driver of the lorry and after investigation, final report was filed against that driver finding that the accident occurred due to his negligence.

6. The Tribunal found that the accident occurred almost in the middle of the road. Evidence also shows that the car driven by the appellant was following the lorry just behind. Evidence further shows that appellant failed to maintain the safe braking distance between the lorry and the car. Exhibit A5 shows that the damages caused to the lorry was on its rear left side. The Tribunal found that if the lorry was driven in the reverse direction and hit on the car, damages would be more. That reasoning is not supported by any evidence. It is true that Exhibit A3 shows that there was smell of alcohol, but there is nothing on record to show that the appellant was under the influence of the same and the accident occurred due to the negligence of the appellant alone. On the other hand, evidence adduced by the appellant clearly shows that the

appellant as well as the driver of the lorry were equally responsible for the accident. So the finding of the Tribunal that the accident occurred due to the sole negligence of the appellant is liable to be interfered with. I hold that the appellant as well as the driver of the lorry were equally responsible for the accident and I fix the liability of the appellant at 50%. Tribunal had not quantified the amount due to the appellant. So for that purpose, the case has to go back.

In the result, appeal is allowed in part. The impugned award is set aside. The case is remanded for fixing the quantum of compensation due to the appellant. The Motor Accidents Claims Tribunal, Ernakulam is directed to take O.P (MV) No.875 of 1996 back to file and dispose of the same afresh in accordance with law after giving a reasonable opportunity to both sides to adduce evidence, if so advised. Parties shall appear before the Tribunal on 18.1.2008.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO.992 OF 2001

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J U D G M E N T

26TH NOVEMBER, 2007